

## **REMARKS**

This is intended to be a complete response to the Office Action mailed February 2, 2010. To begin with, Applicant would like to thank Examiner Danneman for reviewing the instant application in view of the prior art of record. However, for at least the reasons set forth below, Applicant submits that the currently pending claims are not anticipated or rendered obvious by the prior art of record. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of the pending claims and passage of same to allowance.

In the response, the listing of the claims is provided for the convenience of the Examiner only and does not contain any amendments to the claims.

### **Claim Rejection – 35 U.S.C. § 112**

In the Office Action, the Examiner rejected claim 1 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Office Action recites "[a]mended claim 1 has a limitation 'outputting, automatically an alert signal...'[h]owever, paragraph [0024]...only provides support for an 'automated tracking signal.'" Applicant agrees with Examiner Danneman that paragraph [0024] provides support for an "automated tracking signal." However, it is Applicant's belief that paragraph [0024] also discloses the step of "outputting, automatically an alert signal when a discrepancy is found between the actual revenue signal and the expected revenue signal."

In particular, paragraph [0024] of the instant disclosure recites "[t]he store control unit 18 outputs an alert signal upon determination of a difference exceeding a predetermined level between the automated tracking signal and the baseline comparison signal." Support for said limitation can also be found in original claim 7 (now cancelled), which recited the step of "outputting an alert signal when a discrepancy is found between the actual revenue signal and the expected revenue signal." And lastly, additional support can be found, for example, in paragraph [0028], which recites "if a large discrepancy exists between the automated tracking signal and the baseline comparison signal, the store control unit 18 outputs an alert signal."

In view of the above, Applicant submits that claim 1, as previously amended, is described in the original specification and claims in such a way to reasonably convey to one skilled in the art that Applicant had possession of the claimed invention, at the time the invention was filed. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. § 112, first paragraph.

#### Claim Rejection – 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 1-4, 17, and 19-20 under 35 U.S.C. § 103(a) as being unpatentable over Frey et al. (U.S. Pat. No. 5,305,390), in view of Beach et al. (U.S. Patent No. 5,924,077), and further in view of McConnell et al. (U.S. Patent No. 7,240,027). The Office Action suggests that it would have been obvious to combine the elements recited in the Frey and

Beach reference and that the resultant combination discloses every element recited in independent claims 1 and 17. Applicant does not understand the Examiner's line of reasoning supporting the asserted combination of references and therefore respectfully disagrees with it. It is Applicant's belief that the asserted combination of references is improper and that, even if said references were combinable, the resultant combination does not disclose every element recited in the pending independent claims.

With regards to the suggested combination of references, the Office Action states that it would have been obvious to:

combine the well known elements of Frey for determining the number of shoppers in a store with the well known elements of Beach for collecting and transforming POS data into object and reference values which are compared based on corresponding business activities to yield a pass, fail or warning condition.

Although the Examiner recites that it would have been obvious to combine the elements of the Frey and Beach references, Applicant does not understand why one with ordinary skill in the art, at the time of the invention, would have been motivated to make such a combination. The mere fact that the references can be combined or modified may not render the resultant combination obvious. See MPEP 2143.01. Instead, the results must have been predictable to one of ordinary skill in the art. *Id.* Further, the proposed combination cannot change the principle of operation of the prior art reference. *Id.* In this case, there is no suggestion to combine the references or how the references could be combined without impermissibly requiring a substantial reconstruction and redesign of the

elements shown therein. *Id.* Further, the Frey and Beach references do not teach all elements of independent claims 1 and 17.

As previously discussed, the Frey reference is directed to a monitoring system that automatically detects and then "measures" the height of objects or persons moving past a selected location. See Abstract. Frey's system can be used to detect and measure persons entering a store for the purpose of determining the number of "shopping units...i.e., [people who] may be expected to make purchases in the store," entering and/or leaving a store, e.g., an adult shopper with children would equal one "shopping unit." In its simplest form, Frey's system includes a sensor outputting signals that are processed by a signal processor/CPU and then the resulting data is stored in a database.

The Beach reference, on the other hand, is directed to "a computer based system for more effectively monitoring and processing data collected at the point of sale [PoS] of goods or services to facilitate the evaluation and management of related business activities." See column 2, lines 43-47. Essentially, Beach's system converts actual sales data from the cash register to "object values" and then compares the object values to "predefined reference values" to determine if the business activity was successful. See col. 15, lines 46-49 and Figs. 10-13. More specifically, Beach's system uses the actual data received from the PoS system, e.g., the data associated with the actual sale of an item, to generate object values to be compared to reference levels. In the end, Beach's object value/reference value comparison is used to define and quantifiably measure such things as "daily gross sales," "total sales adjusted," "net food sales," and

"net food/gross sales." See Fig. 12. Once this information is determined, the performance of the store can be measured and reported.

Applicant has reviewed the prior art of record and has not located any express or implicit suggestion or motivation for someone having ordinary skill in the art at the time of the invention to combine a system designed to detect and measure the height of individuals passing in front of a sensor with a system designed to automatically download and analyze cash register data to determine the net food sales, for example. While the Office Action states that it would have been obvious to combine the systems of Frey and Beach, the Office Action is silent as to why one with ordinary skill in the art would have been motivated to combine the references. To Applicant's knowledge, there is no suggestion or motivation in the art at the time of the instant application to combine the systems taught by Frey and Beach. The *Graham* court recognized the importance of guarding against hindsight by reciting "serv[ing] to guard against slipping into use of hindsight, and to resist the temptation to read into the prior art the teachings of the invention in issue." *Graham v. John Deere Co.*, 383 U.S. 1, 36 (1966); *In re Fridolph*, 30 CCPA 939, 942 (1943) ("[I]n considering more than one reference, the question always is: does such art suggest doing the thing the [inventor] did.").

Additionally, it is unclear to Applicant how one with ordinary skill in the art would combine the systems of Frey and Beach. More particularly, how would someone include the sensor, and its associated data of Frey's system with the cash register data of Beach's system without impermissibly requiring a substantial reconstruction and redesign of the Beach or Frey system? In order to

establish a *prima facie* case of obviousness by combining references, MPEP 2143 requires the Office personnel to articulate "(2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately." Applicant notes that while it might be possible, after substantial reconstruction and redesign, to create a new system by combining certain elements of Frey and Beach, the suggested combination is impermissible in accordance with the dictates of MPEP 2143.01.

Further, even if the Frey/Beach combination were permissible, the resultant combination still does not arrive at the inventive subject matter recited in pending independent claims 1 and 17. As previously discussed, "most stores selling goods or services have both a computer transaction system to record sales activity [typically a PoS system] when employees are present and a store security system to watch the store when employees are not present." See paragraph [0003] of the disclosure. Additionally, "video surveillance systems have been employed to help owners catch employee theft" since "employee theft is the greatest operating loss facing owners." See paragraph [0005]. At the time of filing of the instant application, large corporations "ha[d] developed extensive security monitoring systems to help catch employee theft." See paragraph [0006]. However, these systems "requir[e] management personnel and strict employee money handling policies implemented to quickly catch unsophisticated employee theft through a series of daily checks and balances but not through any fully automated system." *Id.* To solve these problems, the present invention provides,

among other inventive features, "a store 'transaction system' that can be installed in a store to automatically provide information regarding what revenue the store 'should' be making if all of the customers being serviced are entered into the stores point of sale 'computer system' properly." See paragraph [0010]. The present claims provide a method or system which is able to automatically correlate a customer's activity, i.e., generate an expected revenue signal based on the customer's activity, to the actual revenue generated from that customer, and then generate an alert or notification if a discrepancy exists.

In the Office Action, it was stated "Frey does not specifically disclose generating an expected revenue signal based on customer activity." The secondary Beach reference was cited to provide the deficiencies of Frey's system. However, the Beach reference is not capable of generating an expected revenue signal based on customer activity.

Beach's system is directed to "a computer based system for more effectively monitoring and processing data collected at the point of sale of goods or services to facilitate the evaluation and management of related business activities." See column 2, lines 43-47. Importantly though, Beach's system only receives data from the PoS system, i.e., an actual revenue signal, which is data generated when the customer has finished their shopping and then pays for their items or services. This data is then used to generate the object values which are compared to reference values to determine if, for example, the gross sales for the store are acceptable. How can a system that only receives data from the

cash register, i.e., the actual revenue signal, be used to generate an expected revenue signal based on customer activity?

In support of the proposition that Beach discloses generating an expected revenue signal based on customer activity, the Office Action directs Applicant's attention to column 2, lines 43-59 and column 3, lines 2-20 of the Beach reference. However, the sections relied on by the Office Action do not teach generating an expected revenue based on the customer activity, but instead only discuss the features noted above, i.e., these sections discuss gathering the actual revenue signal in order to compare it to reference values to determine if the gross sales of the store are acceptable. In fact, the sections relied on by the Office Action further clarify that Beach's system only obtains data from the PoS terminal after the actual revenue has been received, i.e., the actual revenue signal.

Further, as Beach does not, and cannot generate an expected revenue signal based on customer activity, it cannot output an alert signal when a discrepancy is found between the actual revenue signal and the expected revenue signal, as also recited in claim 1.

Lastly, with regard to the rejection of claim 20, the Office Action relies on the McConnell reference for the proposition that it teaches use of the internet. While McConnell may disclose use of the Internet, McConnell does not provide the deficiencies noted above with respect to the combination of Frey and Beach. In particular, the McConnell reference does not disclose generating an expected revenue signal based on customer activity. Therefore, even if Frey, Beach and




McConnell were combinable, the resultant combination does not teach or even suggest each of the inventive elements recited in independent claim 17, and therefore claim 20 which depends therefrom.

For the reasons set forth above, it is Applicant's belief that, alone or in combination, Frey et al. and/or Beach et al. fail to teach the inventive elements of Applicant's independent claims 1 and 17, and thus claims 2-4 and 19-20 which depend therefrom. Therefore, Applicant respectfully requests reconsideration and withdrawal of the rejection of claims 1-4, 17 and 19-20 under 35 U.S.C. § 103(a).

### CONCLUSION

The foregoing is intended to be a complete response to the Office Action mailed February 2, 2010. Reconsideration and withdrawal of the rejections is respectfully requested. Should the Examiner have any questions or comments regarding the foregoing, Applicant's attorney would welcome a telephonic interview with the Examiner.

Respectfully submitted,



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